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7 John Owen Murrin, III, in Pro Per

8 STATE BAR COURT
9 HEARING DEPARTMENT – LOS ANGELES
10

11 In the Matter of:) Court File No. 12-J-16931
12)
13 JOHN OWEN MURRIN, III,) RESPONSE TO NOTICE OF
14 No. 75329) DISCIPLINARY CHARGES
15)
16 A Member of the State Bar.)
_____)

17
18 **RESPONSE**

19
20 1. Respondent takes issue with the California State Bar's statement in paragraph Number 6
21 that the discipline from the foreign jurisdiction is equivalent to what would be covered under the
22 citations given in that paragraph. These citations are:

- 23 1. Bus. & Prof. Code Section 6068(c);
- 24 2. Bus. & Prof. Code Section 6068(g);
- 25 3. Bus. & Prof. Code Section 6103.

26 If discipline is permitted as a result of something Respondent did in the foreign jurisdiction,
27 which is denied, it would not involve the kind of conduct or activity encompassed within the
28 above citations.



1 2. In addition the final order received by Respondent from the foreign jurisdiction cannot be
2 the basis for a citation for professional misconduct in this state because it is not the kind of
3 discipline envisioned by Bus & Prof. Code 6049.1. The Foreign jurisdiction in this case is the
4 State of Minnesota.

5 3. The Minnesota discipline Respondent received that is reflected in the Order for discipline
6 that came up through the Minnesota disciplinary arises out of charges that the State Bar of
7 California or the State of California do not recognize. As a result, the State Bar of California
8 (hereinafter "State Bar") investigated this matter and closed the file. For some reason, the State
9 Bar has decided to reopen this matter and thus issued this notice. This case should be dismissed
10 and no discipline rendered Respondent because the State Bar was correct when it decided
11 originally not to seek discipline against Respondent in this matter. The State Bar is seeking to
12 impose discipline or sanctions against Respondent based upon the foreign jurisdiction's order of
13 discipline only, not based upon the underlying facts. The State Bar has waived or decided not to
14 proceed on the underlying facts and is only proceeding under Minnesota's order of discipline as
15 the notice suggests. However, Minnesota's order of discipline cannot be the basis of imposing
16 California discipline upon Respondent for a number of significant reasons set forth hereinafter.

17 4. The Minnesota discipline proceedings arose when Respondent was addressing a single
18 transaction financial loss of \$600,000 as a result of his personal investment in a Ponzi scheme he
19 and his wife made together. Respondent proceeded to represent himself in litigation to obtain his
20 money back (or for damages). Respondent was reasonably successful in obtaining significant
21 recoveries and a judgment from those responsible. Respondent was instrumental in providing
22 key information to the FBI and/or the U.S. attorneys, which resulted in the arrest and conviction
23 of the master minds behind the Ponzi scheme. This success with the FBI clouded Respondent's
24 view of the case. In hindsight, Respondent should have stepped back and let the criminal
25 authorities pursue the matter when it became obvious that the Civil Courts were not ready to
26 fathom or entertain the idea that banks, credit unions, attorneys, auditing firms and others could
27 be involved in a \$50,000,000 (\$50 million) scheme to defraud investors. This was all pre-
28 Lehman Brothers' collapse and before the subprime mortgage meltdown. It was before

1 authorities and judges fully understood the situation surrounding mortgage related fraud.
2 Respondent was unknowingly a victim of this kind of fraud. It resulted in his lifelong savings
3 being lost to the scheme. Respondent sought to expose and remedy this. Respondent can see
4 now he should have gone about this differently. Respondent needs to be more detached and he
5 should have stepped back and had separate legal counsel to represent him, like his wife did.

6 5. Respondent did not represent his wife in the matter. He only represented himself.
7 It is noted that his wife's attorney was Christopher LaNave, a California lawyer, State Bar No.
8 165340, practicing *pro hac vice* in Minnesota. Mr. LaNave has suffered no California public
9 discipline for the very same activity.

10 6. Respondent denies each allegation not admitted and puts the State Bar to its proof.

11 UNDERLYING FACTS

12 7. The underlying litigation that caused Respondent's discipline in Minnesota arose
13 out of Respondent's investment in a real estate loan. Many other investors also loaned money to
14 Avidigm Capital Group, (hereinafter called "Avidigm") including numerous local banks and/or
15 credit unions. This was supposed to be a safe investment, with payback of principle and interest
16 in one year and extended for a second year. Respondent later found out that Avidigm had two
17 sets of accounting records. Upon further investigation Avidigm turned out to be a huge Ponzi
18 scheme. The company went under and Respondent and his wife lost the entire \$600,000 that
19 they were counting on for retirement. The \$600,000 loan was supposed to be secured by
20 \$900,000 of land but it was actually secured by land worth only \$200.00. The Avidigm lawyer
21 that provided the title work for this security was later indicted and served prison time for another
22 similar type of real estate activity. The Avidigm CEO was also convicted as well as the
23 Hoffmans, the masterminds behind it all.

24 8. In February 2006, when Respondent found out that Avidigm was no longer in
25 business, Respondent also found out that the FBI had swept the Avidigm offices and confiscated
26 all of the Avidigm files and the computer hard drives. Respondent, therefore did not have the
27 benefit of all of the relevant material and information prior to suit. Respondent and Mr. LaNave
28 conducted approximately a one-year independent extensive investigation before bringing suit.

1 Not having access to Avidigm's files prior to suit disadvantaged Respondent in pleading the
2 Avidigm case. It is important to note that Minnesota has different standards for pleading than
3 California. It was not until after the suit commenced, in April 2008, that the FBI permitted
4 Respondent and Mr. LaNave access to the files during a document exchange session. Thereafter,
5 Respondent chose to amend his complaint to include this newly discovered evidence obtained
6 from the FBI. The attempt to amend the complaint was not received well by the State Court
7 Judge. Yet, the information the FBI obtained in the document exchange resulted in the FBI and
8 the U.S Attorney freezing the assets of two of the Avidigm perpetrators and also obtaining
9 convictions of the perpetrators at a later point in time. The State Court Judge went on to sanction
10 Murrin (for conduct that California would not recognize as sanctionable). The State Court
11 rulings influenced the pending Avidigm related matters in Federal Court and in the Bankruptcy
12 Court. The State Bar of California has not cited Respondent for any of the underlying facts, its
13 sole basis for seeking discipline is to have the foreign jurisdiction discipline recognized in
14 California.

15 9. There were many twists and turns during the litigation. Respondent commenced
16 suits in various forums to disgorge profits from the various perpetrators, aiders, and abettors.
17 Through these various actions, settlements of approximately \$700,000 were obtained from
18 Avidigm's accountants, their title attorney, a credit union and other individuals that were part of
19 the Avidigm Ponzi scheme. Respondent also received a judgment of \$1.76 million dollars in the
20 Federal Court matter against Avidigm and its CEO. This judgment is uncollectable because the
21 CEO was imprisoned.

22 10. Respondent's state court case against some of the remaining perpetrators was
23 dismissed in June 2008 after only five months of litigation. Yet, as mentioned above, five weeks
24 after the case was dismissed, the U. S. Attorney's office, in connection with the FBI, froze the
25 assets of two of the main Avidigm perpetrators, the Hoffmans, primarily due to the information
26 Respondent provided to the FBI. The Hoffmans were later indicted and caused to serve Federal
27 prison time. This indictment happened in spite of Respondent's civil case against the Hoffmans
28 in state court being dismissed. Overall, five (5) of the individuals originally sued by Respondent

1 in the Avidigm actions have since been sentenced to serve federal prison time for investment
2 and/ or mortgage fraud activities (although not necessarily Avidigm related). Respondent was
3 given a victim's identification number from the FBI for losses incurred as a result of the
4 Avidigm and/or the Hoffmans' schemes.

5 11. The Respondent's state case was dismissed for pleading related matters, for
6 failure to state a claim, and/or matters encompassed by Rule 41 of the Minnesota Rules of Civil
7 Procedure. After dismissing the case, the State Court Judge "invited" the defendants to bring
8 sanction motions against Respondent and his wife's attorney, Christopher LaNave. It is believed
9 this procedure would not have been allowed in California under its rules of procedure and limits
10 on judicial action. The adversaries made Respondent and his pleadings the issue. They did this
11 to deflect attention away from their wrongdoing. As noted above, the State Court Judge
12 dismissed the Avidigm case, and issued sanctions against Respondent, his wife, and Mr. LaNave.
13 On appeal, Respondent's wife's sanctions were dismissed. Respondent's sanctions were
14 basically dismissed on appeal on all counts except for the unique "inherent authority" that is
15 given to Judges in Minnesota that they are not given in California. The State Court Judge
16 referred the matter to the state discipline authorities that resulted in the Minnesota disciplinary
17 charges, but she declined to be a complainant.

18 12. The Federal Court and Bankruptcy Judges, while critical of Murrin's strategy,
19 never made disciplinary referrals, nonetheless, the Minnesota disciplinary system picked them
20 up, sua sponte, and factored them in when charging Respondent and eventually entering its
21 Order for Discipline against him. Again, the State bar has not sought to obtain discipline over
22 these things based upon any of the underlying facts but is only seeking to have the discipline that
23 Minnesota entered be recognized in California.

24
25 **AFFIRMATIVE DEFENSES**

26
27 13. The disciplinary provisions under which Respondent was charged in Minnesota
28 do not exist in California. In Minnesota, Respondent was charged with **violating the rule that**

1 he failed to reasonably expedite litigation consistent with the interest of the client and for
2 engaging in conduct that was prejudicial to the administration of justice. No other charges
3 were brought against Respondent. In the State Bar's Exhibit 1, page 19, the Minnesota
4 Supreme Court states that, "The charges against Murrin were clear and specific...Murrin's
5 conduct "violated Rules 3.2 and 8.4(d) MRPC." Again, no other charges were brought
6 against Respondent. Attached as Exhibit A and B are copies of these Minnesota Rules of
7 Professional Conduct as to § 3.2 and 8.4(d), respectively. In Minnesota, 8.4(d) cannot be used as
8 a catch all provision under its rules of professional conduct, the state and federal constitution
9 where there is a specific provision to cover such activity, which is the case here. Also it appears
10 to be too vague to pass state and federal constitutional standards and fundamental principles of
11 fairness.

12 14. In California, Respondent is being charged with entirely different disciplinary
13 charges than what he was found to have violated in Minnesota. Here is what the California
14 State Bar claims that Respondent's Minnesota discipline translates to, but this is false, wrong and
15 fundamentally unfair:

16 a) **Bus. & Prof. Code Section 6068(c)**: It is the duty of an attorney to do all of
17 the following: (c) To counsel or maintain those actions, proceedings, or defenses
18 only as appear to him or her legal or just, except the defense of a person charged
19 with a public offense.

20 b) **Bus. & Prof. Code Section 6068(g)**: It is the duty of an attorney to do all of
21 the following: (g) Not to encourage either the commencement of the continuance
22 of an action or proceeding from any corrupt motive of passion or interest.

23 c) **Bus. & Prof. Code Section 6103**: A willful disobedience or violation of an
24 order of the court requiring him to do or forbear an act connected with or in the
25 course of his profession, which he ought in good faith to do or forbear, and any
26 violation of the oath taken by him or of his duties as such attorney, constitute
27 causes for disbarment or suspension.
28

1 15. Respondent had no other public discipline in over 30 years of practicing law in
2 many jurisdictions. The discipline Respondent received in Minnesota was all related to
3 Respondent pursuing Avidigm in three different cases. Respondent's litigation did not cause
4 harm to any client or the public. During the approximately 5 months that the case was before the
5 State Court Judge (before the case was dismissed), Respondent's litigation eventually resulted in
6 the above named Defendants being exposed, investigated and eventually indicted for similar and
7 subsequent offenses. The litigation helped the public capture and put an end to continual fraud.
8 In the end, the public benefitted the above cited convictions more than any harm Respondent
9 committed by being zealous which is allowed in California.

10 16. It is undisputed that Avidigm was a Ponzi scheme. It was a multi-state Ponzi
11 scheme taking place in the Midwest. However, none of the Ponzi scheme activities took place in
12 California. None of Respondent's Avidigm related activities took place in California.

13 17. Respondent has been charged with California Bus. & Prof. Code Section 6068(c):
14 requiring attorneys "To counsel or maintain those actions, proceedings, or defenses only as
15 appear to him or her legal or just." Respondent was **not** charged with the Minnesota equivalent
16 of that which is called the unfounded, frivolous or corrupt litigation provision contained in
17 Minnesota Rules of Professional Conduct at § 3.1 attached hereto as Exhibit "A". In fact, in the
18 State Bar's Exhibit 1, page 25, the Minnesota Supreme Court states that,

19
20 "However, we take this opportunity to acknowledge specifically Murrin's success in the
21 United States District Court litigation. As noted earlier, Murrin won a \$1,760,000 default
22 judgment against Avidigm and its CEO... Murrin's pleadings could not have been wholly
frivolous because he won a default judgment."

23 18. Since Respondent was never charged with engaging in unfounded, frivolous and
24 corrupt litigation (and could not because the facts do not justify that), Respondent has never been
25 allowed an opportunity for due process on this charge or to anticipate, prepare, and present a
26 defense on it. It is not appropriate for the State Bar of California to suggest charges or discipline
27 in a reciprocal action based on charges that were never brought in Minnesota and never brought
28 itself within the Statute of Limitations.

1 19. Respondent has also been charged with California Bus. & Prof. Code Section 6103:
2 “A willful disobedience or violation of an order of the court.” The equivalent citation in the
3 Minnesota Rules of Professional Conduct is §3.4(c). A copy is attached as Exhibit “C”.

4 Although Respondent was originally charged in Minnesota with not obeying a court order, after
5 the probable cause hearing, **that count was dismissed. Respondent was therefore never tried**
6 **or found culpable or afforded the opportunity to defend on this issue either.** Therefore, it
7 is not appropriate for the State Bar of California to charge or to discipline Respondent on the
8 California equivalent, rule §6103, on something that Respondent was never charged with nor
9 given the chance to defend himself in Minnesota. The comments in the Minnesota discipline
10 opinions that insinuate otherwise are *dicta*. It is a fact that Respondent never had the chance to
11 defend himself against such charges. To suggest otherwise and to prosecute these charges in a
12 reciprocal action in California would not meet fundamental constitutional protection under
13 California law particularly under Business & Professions Code Section 6049.1(b) (3) and would
14 violate the California and United States’ Constitution.

15 20. Respondent has been charged with California Bus. & Prof. Code Section 6068(g):
16 Attorneys are “Not to encourage either the commencement of the continuance of an action or
17 proceeding from any corrupt motive of passion or interest.” Respondent **was not** charged with
18 the Minnesota equivalent of this as discussed above for the same reasons. He would have had to
19 have been charged with the Minnesota equivalent of Minnesota Rules of Professional Conduct
20 3.1 attached hereto as Exhibit “A.” Since Respondent was never charged as such, Respondent
21 has never been allowed an opportunity for due process on this charge or to anticipate, prepare, or
22 present a defense. It is not appropriate for the State Bar of California to suggest charges or
23 discipline from a foreign jurisdiction based on charges that were never brought in Minnesota and
24 for activity it did not bring itself. It is unfair and not right or lawful to charge Respondent with
25 the California equivalent on a charge that Respondent was never allowed to defend against in
26 Minnesota. Respondent asserts that as a matter of law pursuant to Business & Professions Code
27 6049.1(b) (2) jurisdiction does not allow the discipline as imposed in Minnesota to be the basis
28 for the imposition of discipline in California under the circumstances. In addition §6049.1(b) (3)

1 comes into play because Respondent was not offered fundamental constitutional protection in the
2 Minnesota proceeding. The result is unconstitutional if it is based on matters where a person is
3 not charged with various counts and, therefore, that person is not afforded an opportunity to
4 defend on those counts or discipline in California is for something Respondent never did.

5 21. There are other reasons why California should not give deference to Minnesota's
6 discipline against Respondent. The Minnesota discipline proceedings went through three levels
7 of hearing. One level was a probable cause hearing. At this hearing the panel actually found no
8 probable cause and eliminated the count related to Respondent violating rules and court orders.
9 The next level was the hearing before the Referee. In Minnesota, the Referee is supposed to
10 conduct a due process proceeding, but it is the Supreme Court who makes the final decision.
11 The Referees in Minnesota come from a pool of retired judges from the state judiciary.
12 Therefore, the assigned Referee came from the same judiciary pool as the State Court Judge that
13 sanctioned Respondent and made the referral to the disciplinary authorities. This State Court
14 Judge was the only complainant in the case. The last level of disciplinary review is the Supreme
15 Court review. The Supreme Court does not conduct its own proceeding. It would be improper
16 to read into its decision that Respondent did things that he was not charged with. There is
17 nothing in their opinion to suggest the Supreme Court intended to overturn or enlarge what
18 Respondent was charged with. The Minnesota Supreme was not acting as a court in the
19 traditional sense, or as a fact finder, but as an administrative body setting policy for discipline
20 matters. If California or Minnesota thought these kind of violations occurred, then they could
21 have charged them out. They did not and the Statue of Limitations has passed on these charges.
22 The State Bar of California is proceeding only upon the violations the Minnesota jurisdiction has
23 imposed on Respondent. The State Bar of California is not allowed to enlarge or to broaden the
24 charges more than the original charges. That would be wrong and unfair.

25 22. The State Bar of California originally conducted an investigation of the
26 Minnesota disciplinary action for purposes of bringing a reciprocal discipline action based upon it.
27 After an investigation, the State Bar of California closed the case in April of 2014. See Exhibit
28 D. It is improper to reopen the case at this time. To do so is unconstitutional and violates

1 fundamental principles of law governing disciplinary proceedings. Respondent has purged most
2 documents after the California State Bar closed the case. Therefore, Respondent does not have
3 key documents to properly prepare for trial. That makes it difficult to fully defend himself. It
4 had been seven years since the underlying Avidigm case was dismissed. Reopening the case
5 after the California State Bar closed the case (Exhibit D) prejudices Respondent and it also
6 violates fundamental constitutional principles.

7 23. Under Business and Profession Code 6049.1(b), this case should not become a
8 disciplinary matter in California as a matter of law. Stated in subdivision (b) of the above
9 statute, there should be no reciprocal discipline where “the member’s culpability determined in
10 the proceeding in the other jurisdiction would not warrant the imposition of discipline in the
11 State of California under the laws or rules binding upon member of the state Bar at the time the
12 member committed misconduct in such other jurisdiction.” This is clearly the case here. The
13 discipline in Minnesota is clearly related to, and limited to, the failure to reasonably expedite
14 litigation consistent with the interest of the client.² There is no such similar rule or requirement
15 in California. Under Business and Profession Code 6049.1(b) it is improper to give this matter
16 reciprocal authority in California since there is no such rule or equivalent discipline in
17 California. Respondent has not violated a rule or law that is illegal or improper in California.

19 24. The Business and Profession Code 6049.1 (b) 2) allows California to ignore an
20 out of state proceeding that lacks constitutional validity or is constitutionally impaired. Below
21 are some additional reason why that should be adjudged in this case:

22 a. The discipline procedure in Minnesota did not allow Murrin to cross-
23 examine any of the key witnesses, in particular the State Court Judge that referred the matter.
24 Respondent’s subpoenas to the Judges were quashed by the Referee, so Respondent was not
25 permitted the right to cross-examine witnesses against him which is allowed under the Fourth

26
27 ² In the State Bar’s Exhibit 1, page 25, the Minnesota Supreme Court states that, “In most cases,
28 the attorneys’ violations of the rules arose from the attorney’s *neglect* of client matters.... This
case presents the opposite circumstances: Murrin alleged misconduct arises from his
overzealous *advocacy*.” California allows and even requires zealous representation.

1 and Fifth Amendments to the United States Constitution and similar rights under the California
2 Constitution.

3 b. Respondent does not have a record of any public discipline in California.

4 This matter was his only public discipline in almost 30 years of practicing law in multiple
5 jurisdictions.

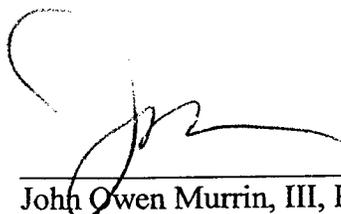
6 25. Respondent held a good faith belief at the time he was handling the Avidigm
7 cases that he was acting within the bounds of proper and acceptable zealous representation.
8 Respondent was pleading elements of the fallout of the subprime mortgage crisis almost a year
9 before the Lehman Brothers, AIG meltdown. At the time, it was inconceivable to many
10 government personnel including judges, that banks and credit unions had such loose lending
11 policies that could spawn criminal activity. But history has shown that is what happened. The
12 loose lending practices incentivized banks, attorneys and real estate personnel to commence
13 numerous Ponzi schemes based on mortgage fraud. As it turned out, that is what happened here
14 in Respondent's situation.

15 26. Respondent has been cooperative with the State Bar of California in this matter.

16 27. The State Bar of California disciplinary case attempts to bring in conduct other
17 than what Respondent was actually disciplined for in Minnesota. The State Bar's action to
18 Discipline Murrin should be barred by the Statute of Limitations, laches and principles of equity
19 and justice.

20 28. Respondent has references who will vouch for him having good character in spite
21 of this matter.

22
23
24 Dated: June 4, 2015

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John Owen Murrin, III, Respondent.

EXHIBIT "A"

officials. The critical question is whether the opinion is to be made public.

A legal evaluation should be distinguished from an investigation of a person with whom the lawyer does not have a client-lawyer relationship. For example, a lawyer retained by a purchaser to analyze a vendor's title to property does not have a client-lawyer relationship with the vendor. So also, an investigation into a person's affairs by a government lawyer, or by special counsel employed by the government, is not an evaluation as that term is used in this Rule. The question is whether the lawyer is retained by the person whose affairs are being examined. When the lawyer is retained by that person, the general rules concerning loyalty to client and preservation of confidences apply, which is not the case if the lawyer is retained by someone else. For this reason, it is essential to identify the person by whom the lawyer is retained. This should be made clear not only to the person under examination, but also to others to whom the results are to be made available.

Duty to Third Person

When the evaluation is intended for the information or use of a third person, a legal duty to that person may or may not arise. That legal question is beyond the scope of this Rule. However, since such an evaluation involves a departure from the normal client-lawyer relationship, careful analysis of the situation is required. The lawyer must be satisfied as a matter of professional judgment that making the evaluation is compatible with other functions undertaken in behalf of the client. For example, if the lawyer is acting as advocate in defending the client against charges of fraud, it would normally be incompatible with that responsibility for the lawyer to perform an evaluation for others concern-

ing the same or a related transaction. Assuming no such impediment is apparent, however, the lawyer should advise the client of the implications of the evaluation, particularly the lawyer's responsibilities to third persons and the duty to disseminate the findings.

Access to and Disclosure of Information

The quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily a lawyer should have whatever latitude of investigation seems necessary as a matter of professional judgment. Under some circumstances, however, the terms of the evaluation may be limited. For example, certain issues or sources may be categorically excluded, or the scope of search may be limited by time constraints or the non-cooperation of persons having relevant information. Any such limitations which are material to the evaluation should be described in the report. If after a lawyer has commenced an evaluation, the client refuses to comply with the terms upon which it was understood the evaluation was to have been made, the lawyer's obligations are determined by law, having reference to the term of the client's agreement and the surrounding circumstances.

Financial Auditors' Requests for Information

When a question concerning the legal situation of a client arises at the instance of the client's financial auditor and the question is referred to the lawyer, the lawyer's response may be made in accordance with procedures recognized in the legal profession. Such a procedure is set forth in the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information, adopted in 1975.

ADVOCATE

Rule 3.1. Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Adopted June 13, 1985, eff. Sept. 1, 1985.

Comment—1985

The advocate has a duty to use legal procedure for the fullest benefits of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the client desires to have the action taken primarily for the purpose of harassing or maliciously injuring a person or if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

Historical Notes

This rule is similar to provisions of former DR 2-109 and DR 7-102(A)(2) of the Minn. Code of Prof. Responsibility.

Rule 3.2. Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Adopted June 13, 1985, eff. Sept. 1, 1985.

1014

EXH

Comment—1985

Dilatory practices bring the administration of justice into disrepute. Delay should not be indulged merely for the convenience of the advocates, or for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

Historical Notes

This rule is similar to provisions of former DR 7-102(A)(1) of the Minn. Code of Prof. Responsibility.

Rule 3.3. Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

- (1) make a false statement of fact to a tribunal;
- (2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;
- (3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

(b) The duties stated in paragraph (a) apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Adopted June 13, 1985, eff. Sept. 1, 1985.

Comment—1985

The advocate's task is to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client is qualified by the advocate's duty of candor to the tribunal. However, an advocate does not vouch for the evidence submitted in a cause; the tribunal is responsible for assessing its probative value.

Representations by a Lawyer

An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the lawyer. Compare Rule 3.1. However, an assertion purporting to be the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may proper-

ly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 1.2(c) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with Rule 1.2(c), see the Comment to that Rule. See also the Comment to Rule 8.4(b).

Misleading Legal Argument

Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(3), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction which has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

False Evidence

When evidence that a lawyer knows to be false is provided by a person who is not the client, the lawyer must refuse to offer it regardless of the client's wishes.

When false evidence is offered by the client, however, a conflict may arise between the lawyer's duty to keep the client's revelations confidential and the duty of candor to the court. Upon ascertaining that material evidence is false, the lawyer should seek to persuade the client that the evidence should not be offered or, if it has been offered, that its false character should immediately be disclosed. If the persuasion is ineffective, the lawyer must take reasonable remedial measures.

Except in the defense of a criminal accused, the rule generally recognized is that, if necessary to rectify the situation, an advocate must disclose the existence of the client's deception to the court or to the other party. Such disclosure can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.2(c). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court.

Perjury by a Criminal Defendant

Whether an advocate for a criminally accused has the same duty of disclosure has been intensely debated. While it is agreed that the lawyer should seek to persuade the client to refrain from perjurious testimony, there has been dispute concerning the lawyer's duty when that persuasion fails. If the confrontation with the client occurs before trial, the lawyer ordinarily can withdraw. Withdrawal before

EXHIBIT “B”

judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

Historical Notes

This rule is similar to provisions of former DR 8-102 and DR 8-103 of the Minn. Code of Prof. Responsibility.

Rule 8.3. Reporting Professional Misconduct

(a) A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the Office of Lawyers Professional Responsibility.

(b) A lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the Board on Judicial Standards.

(c) This Rule does not require disclosure of information that Rule 1.6 requires or allows a lawyer to keep confidential or information gained by a lawyer or judge while participating in a lawyers assistance program or other program providing assistance, support or counseling to lawyers who are chemically dependent or have mental disorders.

Adopted June 13, 1985, eff. Sept. 1, 1985. Amended April 14, 1992; April 17, 2000, eff. July 1, 2000.

Comment: 2000

Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

A report about misconduct is not required where it would involve violation of Rule 1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests. See the comment to Rule 1.6.

If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved

to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of the Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the rules applicable to the client-lawyer relationship.

Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in a bona fide lawyers assistance program or other program that provides assistance, support or counseling to lawyers, including lawyers and judges who may be impaired due to chemical abuse or dependency, behavioral addictions, depression or other mental disorders. In that circumstance, providing for the confidentiality of information obtained by a lawyer-participant encourages lawyers and judges to participate and seek treatment through such programs. Conversely, without such confidentiality, lawyers and judges may hesitate to seek assistance, which may then result in additional harm to themselves, their clients, and the public. The Rule therefore exempts lawyers participating in such programs from the reporting obligation of paragraphs (a) and (b) with respect to information they acquire while participating. A lawyer exempted from mandatory reporting under part (c) of the Rule may nevertheless report misconduct in the lawyer's discretion, particularly if the impaired lawyer or judge indicates an intent to engage in future illegal activity, for example, the conversion of client funds. See the comments to Rule 1.6.

Historical Notes

This rule is similar, in part, to provisions of former DR 1-103(A) of the Minn. Code of Prof. Responsibility.

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

(g) harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual preference or marital status in connection with a lawyer's professional activities;

(h) commit a discriminatory act, prohibited by federal, state or local statute or ordinance, that reflects adversely on the lawyer's fitness as a lawyer. Whether a discriminatory act reflects adversely on a lawyer's fitness as a lawyer shall be determined after consideration of all the circumstances, including (1) the seriousness of the act, (2) whether the lawyer knew that it was prohibited by statute or ordinance, (3) whether it was part of a pattern of prohibited conduct, and (4) whether it was committed in connection with the lawyer's professional activities.

Adopted June 13, 1985, eff. Sept. 1, 1985. Amended Dec. 27, 1989, eff. Jan. 1, 1990; April 14, 1992.

Comment—1991

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. Although a lawyer, is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to the practice of law. Offenses involving violence, dishonesty, or breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

Paragraph (g) specifies a particularly egregious type of discriminatory act—harassment on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual preference, or marital status. What constitutes harassment in this context may be determined with reference to antidiscrimination legislation and case law thereunder. This harassment ordinarily involves the active burdening of another, rather than mere passive failure to act properly.

Harassment on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual preference, or marital status may violate either paragraph (g) or paragraph (h). The harassment violates paragraph (g) if the lawyer committed it in connection with the lawyer's professional activities. Harassment, even if not committed in connection with the lawyer's professional activities, violates paragraph (h) if the harassment (1) is prohibited by antidiscrimination legislation and (2) reflects ad-

versely on the lawyer's fitness as a lawyer, determined as specified in paragraph (h).

Paragraph (h) reflects the premise that the concept of human equality lies at the very heart of our legal system. A lawyer whose behavior demonstrates hostility toward or indifference to the policy of equal justice under the law may thereby manifest a lack of character required of members of the legal profession. Therefore, a lawyer's discriminatory act prohibited by statute or ordinance may reflect adversely on his or her fitness as a lawyer even if the unlawful discriminatory act was not committed in connection with the lawyer's professional activities.

Whether an unlawful discriminatory act reflects adversely on fitness as a lawyer is determined after consideration of all relevant circumstances, including the four factors listed in paragraph (h). It is not required that the listed factors be considered equally, nor is the list intended to be exclusive. For example, it would also be relevant that the lawyer reasonably believed that his or her conduct was protected under the state or federal constitution or that the lawyer was acting in a capacity for which the law provides an exemption from civil liability. See, e.g., Minn.Stat. Section 317A.257 (unpaid director or officer of nonprofit organization acting in good faith and not willfully or recklessly).

A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(c)(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

Historical Notes

This rule is similar, in part, to provisions of former DR 1-102 and DR 9-101(C) of the Minn. Code of Prof. Responsibility.

Rule 8.5. Jurisdiction

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere.

Adopted June 13, 1985, eff. Sept. 1, 1985.

Comment—1985

In modern practice lawyers frequently act outside the territorial limits of the jurisdiction in which they are licensed to practice, either in another state or outside the United States. In doing so, they remain subject to the governing authority of the jurisdiction in which they are licensed to practice. If their activity in another jurisdiction is substantial and continuous, it may constitute practice of law in the jurisdiction. See Rule 5.5.

If the rules of professional conduct in the two jurisdictions differ, principles of conflict of laws may apply. Similar problems can arise when a lawyer is licensed to practice in more than one jurisdiction.

Where the lawyer is licensed to practice law in two jurisdictions which impose conflicting obligations, applicable rules of choice of law may govern the situation. A related problem arises with re-

EXHIBIT "C"

trial may not be possible, however, either because trial is imminent, or because of the confrontation with the client does not take place until the trial itself, or because no other counsel is available.

The most difficult situation, therefore, arises in a criminal case where the accused insists on testifying when the lawyer knows that the testimony is perjurious. The lawyer's effort to rectify the situation can increase the likelihood of the client's being convicted as well as opening the possibility of a prosecution for perjury. On the other hand, if the lawyer does not exercise control over the proof, the lawyer participates, although in a merely passive way, in deception of the court.

Three resolutions of this dilemma have been proposed. One is to permit the accused to testify by a narrative without guidance through the lawyer's questioning. This compromises both contending principles; it exempts the lawyer from the duty to disclose false evidence but subjects the client to an implicit disclosure of information imparted to counsel. Another suggested resolution, of relatively recent origin, is that the advocate be entirely excused from the duty to reveal perjury if the perjury is that of the client. This is a coherent solution but makes the advocate a knowing instrument of perjury.

The other resolution of the dilemma is that the lawyer must reveal the client's perjury if necessary to rectify the situation. A criminal accused has a right to the assistance of an advocate, a right to testify and a right of confidential communication with counsel. However, an accused should not have a right to assistance of counsel in committing perjury. Furthermore, an advocate has an obligation not only in professional ethics but under the law as well, to avoid implication in the commission of perjury or other falsification of evidence. See Rule 1.2(c).

Remedial Measures

If perjured testimony or false evidence has been offered, the advocate's proper course ordinarily is to remonstrate with the client confidentially. If that fails, the advocate should seek to withdraw if that will remedy the situation. If withdrawal will not remedy the situation or is impossible, the advocate should make disclosure to the court. It is for the court then to determine what should be done—making a statement about the matter to the trier of fact, ordering a mistrial or perhaps nothing. If the false testimony was that of the client, the client may controvert the lawyer's version of their communication when the lawyer discloses the situation to the court. If there is an issue whether the client has committed perjury, the lawyer cannot represent the client in resolution of the issue, and a mistrial may be unavoidable. An unscrupulous client might in this way attempt to produce a series of mistrials and thus escape prosecution. However, a second such encounter could be construed as a deliberate abuse of the right to counsel and as such a waiver of the right to further representation.

Constitutional Requirements

The general rule—that an advocate must disclose the existence of perjury with respect to a material fact, even that of a client—applies to defense coun-

sel in criminal cases, as well as in other instances. However, the definition of the lawyer's ethical duty in such a situation may be qualified by constitutional provisions for due process and the right to counsel in criminal cases. The obligation of the advocate under these Rules is subordinate to such constitutional requirements.

Refusing to Offer Proof Believed to Be False

Generally speaking a lawyer has authority to refuse to offer testimony or other proof that the lawyer believes is untrustworthy. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. In criminal cases, however, a lawyer may be denied this authority by constitutional requirements governing the right to counsel.

Ex Parte Proceedings

Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in an ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

Historical Notes

This rule is similar, in part, to provisions of former DR 7-102(A)(3) to (5), (B) and DR 7-106(B)(1) of the Minn. Code of Prof. Responsibility.

Rule 3.4. Fairness to Opposing Party and Counsel

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a

witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Adopted June 13, 1985, eff. Sept. 1, 1985.

Comment—1985

The procedure of the adversary system contemplates that the evidence in a case is to be marshalled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed.

With regard to paragraph (b), it is not improper to pay a witness's expenses or to compensate an expert witness on terms permitted by law.

Paragraph (f) permits a lawyer to advise employees of a client to refrain from giving information to another party, for the employees may identify their interests with those of the client. See also Rule 4.2.

Historical Notes

This rule is similar, in part, to provisions of former DR 7-102(A)(6), DR 7-104(A)(2), DR 7-106(A), (C)(1) to (C)(4) and DR 7-109 of the Minn. Code of Prof. Responsibility.

Rule 3.5. Impartiality and Decorum of the Tribunal

(a) Before the trial of a case, a lawyer connected therewith shall not, except in the course of official proceedings, communicate with or cause another to communicate with anyone the lawyer knows to be a member of the venire from which the jury will be selected for the trial of the case.

(b) During the trial of the case:

(1) a lawyer connected therewith shall not, except in the course of official proceedings, communicate with or cause another to communicate with any member of the jury.

(2) a lawyer who is not connected therewith shall not, except in the course of official proceedings,

communicate with or cause another to communicate with a juror concerning the case.

(c) After discharge of the jury from further consideration of a case with which the lawyer was connected, the lawyer shall not ask questions of or make comments to a member of that jury that are calculated merely to harass or embarrass the juror or to influence the juror's actions in future jury service.

(d) A lawyer shall not conduct or cause another, by financial support or otherwise, to conduct a vexatious or harassing investigation of a juror or prospective juror.

(e) All restrictions imposed by this rule apply also to communications with or investigations of members of a family of a juror or prospective juror.

(f) A lawyer shall reveal promptly to the court improper conduct by, or by another toward, a juror or prospective juror or a member of the family thereof, of which the lawyer has knowledge.

(g) In an adversary proceeding a lawyer shall not communicate or cause another to communicate as to the merits of the case with the judge or an official before whom a proceeding is pending except:

(1) in the course of official proceedings.

(2) in writing, if the lawyer promptly delivers a copy of the writing to opposing counsel or to the adverse party if the party is not represented by a lawyer.

(3) orally upon adequate notice to opposing counsel or to the adverse party if the adverse party is not represented by a lawyer.

(4) as otherwise authorized by law.

(h) A lawyer shall not engage in conduct intended to disrupt a tribunal.

Adopted June 13, 1985, eff. Sept. 1, 1985.

Comment—1985

Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the ABA Model Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions.

The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can prevent the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

Historical Notes

This rule is similar to provisions of former DR 7-106(C)(6), DR 7-108, and DR 7-110(B) of the Minn. Code of Prof. Responsibility.

EXHIBIT “D”



THE STATE BAR
OF CALIFORNIA

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April 30, 2014

PERSONAL AND CONFIDENTIAL

John Owen Murrin, III
7045 Los Santos Drive
Long Beach, CA 90815

**Re: Case Number: 12-J-16931
A State Bar Investigation**

Mr. Murrin:

This letter is sent to you based upon information that you are not currently represented by counsel in this matter. If this is incorrect, please advise me within five days so that future communications may be directed to your counsel.

The State Bar has completed the investigation of the allegations of professional misconduct and determined that this matter does not warrant further action. Therefore, the matter is closed.

The decision to close this matter is without prejudice to further proceedings as appropriate pursuant to rule 2603 of the Rules of Procedure of the State Bar of California.

Thank you for your cooperation in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ashod Meoradian", written over a horizontal line.

Ashod Meoradian
Senior Trial Counsel

AM: am

